
**Public Safety & Emergency Preparedness
Committee**

HB 1657

Brief Description: Removing the statute of limitations for certain sex offenses.

Sponsors: Representatives Ahern, McCune, Miloscia, Hurst, Hope, Rivers and Kelley.

Brief Summary of Bill

- Eliminates the statute of limitations for the prosecution of Rape in the First and Second Degree when the victim is under the age of 18 years at the time the crime is committed and Rape in the First and Second Degree of a Child.
- Provides a 10 year statute of limitations for Rape in the First and Second Degree when the victim is 18 years or older at the time of the offense if the rape was reported within one year and a three-year statute of limitations if the rape was not reported within one year.

Hearing Date: 2/9/11

Staff: Morgan Powell (786-7119) and Alexa Silver (786-7190).

Background:

Statute of Limitations.

Statute of limitations is a statute that sets a time limit, after which a person may not be tried for a crime, or after which some other legal action may not take place. Most crimes are subject to a statute of limitations. Generally, the more serious a crime is, the longer the statute of limitations will be. Some crimes have their own specific statutes of limitations, but the default statute of limitations provides the following periods:

- felonies - three years;
- gross misdemeanors - two years; and
- misdemeanors - one year.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Generally, statutes of limitations begin to run at the time of the commission of the crime. Some statutes of limitations do not begin to run until after the crime has been discovered, or until after some other specified event has occurred. All statutes of limitations are tolled when the person charged is a non-resident of the state.

When the Legislature lengthens a statute of limitations, the issue arises as to whether the new period applies to crimes committed before the effective date of the new statute. Courts have decided that it *will* apply to a prior crime if the prior period of limitations has not expired. A decision from 1987, *State v. Hodgson*, upheld the application of an extended sex crimes statute of limitations where the prosecution was for a crime committed before the new act became effective, but where the old statute of limitations had not yet expired. However, the decision suggests that a new statute of limitations could not be used to "revive" a prosecution where the original period of limitation had already run on the crime.

A few crimes have no period of limitation, and prosecution for them may be brought at any time. These crimes are all felonies that result in a death. They include: Murder, Homicide by Abuse, Arson (where a death results), Vehicular Homicide, Vehicular Assault (where a death results), and Hit-and-Run (where a death results).

Rape.

A person is guilty of Rape in the First Degree when the person engages in sexual intercourse with another person by forcible compulsion where the perpetrator:

- uses or threatens to use a deadly weapon or what appears to be a deadly weapon;
- kidnaps the victim;
- inflicts serious physical injury; or
- feloniously enters into the building or vehicle where the victim is situated.

A person is guilty of Rape in the Second Degree when the person engages in sexual intercourse with another person by forcible compulsion when the victim:

- is incapable of consent by reason of being physically helpless or mentally incapacitated;
- is a person with a developmental disability and the perpetrator is a person who is not married to the victim who has supervisory authority over the victim;
- is a client or patient and the perpetrator is a health care provider;
- is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or
- is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who has a significant relationship with the victim.

A person is guilty of Rape of a Child in the First Degree when the person has sexual intercourse with another who is less than 12 years old and not married to the perpetrator and the perpetrator is at least 24 months older than the victim.

A person is guilty of Rape of a Child in the Second Degree when the person has sexual intercourse with another who is at least 12 years old but less than 14 years old and not married to the perpetrator and the perpetrator is at least 36 months older than the victim.

Current Law.

The statute of limitations is 10 years for Rape in the First and Second Degree when the victim is 14 years or older at the time of the crime and the rape is reported within one year of its commission. If the victim is under 14 years of age and the rape is reported within one year of its commission, the statute of limitations runs until the victim's 28th birthday.

The statute of limitations is three years for Rape in the First and Second Degree when the victim is 14 years or older at the time of the crime and the rape is not reported within one year of its commission. If the victim is under 14 years of age, the offense cannot be prosecuted more than three years after the victim's 18th birthday or more than seven years after the rape's commission, whichever is later.

Summary of Bill:

Rape in the First and Second Degree where the victim at the time of the crime is under the age of 18 and Rape of a Child in the First and Second Degree may be prosecuted at any time after the commission of such crime.

Rape in the First and Second Degree where the victim at the time of the crime is 18 years or older cannot be prosecuted more than 10 years after the commission of such crime if the rape is reported to a law enforcement agency within one year of its commission.

Rape in the First and Second Degree where the victim at the time of the crime is 18 years or older may not be prosecuted more than three years after the commission of such crime if the rape is not reported to a law enforcement agency within one year of its commission.

Appropriation: None.

Fiscal Note: Requested on February 2, 2011.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.